Supreme Court, U.S.
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No. 96-909

In The

Supreme Court of the United States

October Term, 1996

VERA ARMSTRONG CHERRY,

Plaintiff, Appellant,

vs.

ROCKING HORSE RIDGE ESTATES ASSOCIATION, INC., et al.,

Defendant, Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeal For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. WHETHER GROUNDS EXIST FOR GRANTING THE PETITION.

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I. STATEMENT OF THE CASE[1]

This petition is taken from a final judgment disposing of all issues between the parties. The petition seeks to reverse the United States District Court's Order granting summary judgment on August 26, 1994 in favor of respondent.

On October 6, 1993, petitioner commenced a civil rights action which included allegations for conspiracy, denial of due process and violation of petitioner's freedom of expression. Petitioner initially alleged violations of several civil rights statutes.

After several amendments to petitioner's original complaint, motions for summary judgment were filed by all remaining defendants. An Order granting summary judgment in favor of this respondent was entered on August 26, 1994. Petitioner subsequently appealed her action to the United States Court of Appeals for the Ninth Circuit which affirmed the decision of the District Court on or about June 14, 1996.

The substance of the petition before this Court is based upon the petitioner's perception that the lower court failed to recognize certain procedural and substantive issues. Although the rambling and circuitous nature of the language in the petition is difficult to interpret, it appears that evidentiary issues are at the heart of petitioner's request for review by this court.

Petitioner seeks review of the District Court order granting summary judgment which was upheld by the United States Court of Appeals for the Ninth Circuit.

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[1] Respondent accepts petitioner's statement of jurisdiction.

The standard for review as stated by the petitioner is improper. The arguments used as a basis for granting a Petition for Writ of Certiorari (hereinafter, "Writ") are improper.

II. SUMMARY OF ARGUMENT

Petitioner sought to overturn the ruling of the United States District Court by pursuing an appeal. Petitioner's appeal was a repeated and ongoing attempt to ignore the underlying fact that sufficient probable cause was established for an involuntary hospitalization under *California Statute, Welfare & Institutions Code* §5150.

Probable cause was clearly established through the observations of lay persons and mental health professionals. Friends of petitioner, including Carol Lipinski, Kay Cantrell and Natalie Schrier all set forth under oath their observations and discussions with petitioner. There was opportunity for the court to consider their observations and there was opportunity for petitioner to present any evidence in contradiction. In addition, mental health professionals including Dr. Jose Flores-Lopez and Sherry Blanchard observed behavior that was sufficient to establish probable cause for this hospitalization. All of this evidence was properly put before the court. Finally, petitioner's son, Frank Armstrong, had observed behavior that supports the finding of probable cause.

Accordingly, where observations of strong behavior provides an objectively reasonable basis for a commitment, the hospitalization of a plaintiff is proper. *Glass v. Mayas*, 984 F.2d 55, 57 (2nd Cir. 1993).

Petitioner's initial argument based on hearsay, must fail inasmuch as said evidence was properly put before the District Court. Petitioner had the right and opportunity to examine said witnesses. The fact that she did not avail herself of the opportunity to examine Natalie Schrier or other witnesses is not a basis for review by this court. However, all of the argument about this hearsay fails to address the threshold basis for the District Court's decision with respect to respondent, Royale TRC.

A private mental hospital is not a state actor even though it was designated by state law as a facility for the mentally ill. Licensing and regulation were not enough to establish state action where plaintiff used the hospital and others in connection with her allegedly unconstitutional commitment. *Harvey v. Harvey*, 949 F.2d 1127 (11th Cir. 1992).

The language of petitioner's second argument does not lend itself to a coherent response. Petitioner appears to attack the lower court decision based upon policy and evidentiary issues raised in conjunction with the deposition of Dr. Jose Flores-Lopez. Petitioner acknowledges that Dr. Flores-Lopez was represented by counsel at his deposition and argues that this rises to the level of a conspiracy so as to satisfy the requirements of *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978). Even if such a position had any merit, petitioner fails to show how the process or substance of this deposition could be used as a basis to reverse the order for summary judgment against respondent, Royale TRC.

An involuntary commitment by proper procedures is not a deprivation of a substantial liberty interest under

the Fourteenth Amendment of the United States Constitution. *Youngberg v. Romeo*, 457 U.S. 307 (1952). (See also *Vitek v. Jones*, 445 U.S. 480, 491-499 (1980)).

Throughout this litigation, petitioner failed to offer sufficient or proper evidence to raise a triable issue of fact pertaining to the violation of her civil rights. As such, there was no violation of a policy, practice and/or custom pursuant to *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978). There must be a particular policy which is a "moving force" or an "affirmative link" with a constitutional violation. *City of Oklahoma City v. Tuttle*, 472 U.S. 808 (1985). There simply is no constitutional deprivation in this case.

Petitioner's third and fourth arguments arise out of allegations pertaining to the administration of medication during petitioner's hospitalization. Probable cause to hospitalize the petitioner pursuant to *California Welfare & Institutions Code* §5150 will clearly give rise to the corresponding appropriate need to treat such a patient during the hospitalization.

The *Youngberg* court clearly emphasized that deference must be given to the judgment of the professionals in cases of involuntary commitment. An involuntary commitment such as the one at issue in this case naturally requires some attention to the treatment of those individuals who are committed. The *Young* court stated:

> " . . . Liability may only be imposed when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base a decision on such judgment." *Youngberg* at 323, 2462.

Petitioner continues to offer argument without evidence. The argument as stated in the petition now before this court stands in contrast to the documents and testimony offered in this case. The ongoing practice of the petitioner in this matter has been to offer argument without evidence. Petitioner offers this court no evidence that there was an abuse of discretion by the lower court such that the order granting summary judgment should be overturned.

III. REASON FOR DENYING THE PETITION

Petitioner urges this Court to reverse the decision of the District Court using a plain error standard of review. The standard for review as set forth by petitioner is improper given the nature of the action and the substance of the issues now before the court. *U.S. v. Olano*, 507 U.S. 725 (1993); *U.S. v. Spillone*, 879 F.2d 514 (8th Cir. 1988) and *U.S. v. Soulard*, 730 F.2d 1292 (9th Cir. 1984).

Petitioner's arguments fail to address the threshold issue of state action. The only intelligible basis for a claim against this respondent was pursuant to the civil rights provisions set forth in 42 U.S.C. §1983. Petitioner failed to proffer any evidence to support her position that respondent, Royale TRC, is a state actor that may be accountable under the provisions of 42 U.S.C. §1983.

The petition now before this Court sets forth all of the information necessary for the Court to deny the petition. At no time does petitioner establish an absence of probable cause for the involuntary hospitalization that is at issue. At no time does petitioner establish that this respondent is a state actor. Instead, petitioner offers a

deficient procedural argument as the primary reason for review by this Court.

The petitioner urges the Court to reverse using a plain error standard and states that there is a "total lack of Supervision by the Appellate Court". (Writ at page 8, paragraph 4). Petitioner further states that there was no right to confront material witnesses. Said argument stands in stark contrast to the entire discovery process in this underlying civil action. There was ample opportunity to confront and examine the identified witnesses and petitioner failed to conduct any discovery in this regard. This is not a proper basis for review of an order for summary judgment.

IV. CONCLUSION

For reasons already made clear, summary remand is not applicable here.

The language of Petitioner's Writ sets forth a great deal of material already put before the District Court and the Ninth Circuit Court of Appeals. The Writ fails to set forth a sufficient bases for any change in ruling of the lower court.

DATED: January 8, 1997 Respectfully submitted

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